

HOUSE BILL No. 1215

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-16-7; IC 8-23-9.

Synopsis: Common construction wage. Makes the following changes to the common construction wage law: (1) Requires that the common construction wage (wage) be determined on two skill levels (rather than three classes) of labor and provides that the wage includes fringe benefits. (2) Requires that information submitted to a wage committee be accompanied by a verified statement that the information is true and accurate. (3) Requires the state department of labor (department) to compel compliance with the wage statute by an awarding agency that has divided a public work project to avoid the statute. (4) Establishes requirements for payroll and other records submitted by contractors and subcontractors performing work on a public work project. (5) Eliminates an exemption from the wage statute for public work performed at certain Purdue University facilities. (6) Provides that the commissioner of the department has certain powers to investigate and enforce violations of the wage statute. (7) Establishes a department procedure and a private right of action to enforce the wage statute. (8) Prohibits for at least five years the award of a public work contract to a contractor, subcontractor, or certain persons with an interest in a

(Continued next page)

Effective: July 1, 2008.

Stilwell, Niezgodski

January 14, 2008, read first time and referred to Committee on Labor and Employment.

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contractor or subcontractor that violates the wage statute at least two times during a three year period. (9) Prohibits an agreement to pay a wage lower than the common construction wage on a public work project. (10) Provides that a knowing or intentional violation of the wage statute is a Class B misdemeanor. (11) Provides that making certain requests or demands on a worker to pay back, return, donate, contribute, or give back the worker's wages, salary, or another thing of value to obtain or retain employment on a public work project is a Class A misdemeanor. (12) Requires that a person awarded a public work contract by the department of transportation pay at least the common construction wage. (13) Repeals superseded statutes concerning penalties for violating the wage statute and wages paid on public work projects awarded by the department of transportation.

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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

HOUSE BILL No. 1215

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-16-7-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) Any firm, individual,
3 partnership, limited liability company, or corporation that is awarded
4 a contract by the state, a political subdivision, or a municipal
5 corporation for the ~~construction~~ **performance** of a public work
6 **project**, and any subcontractor of the ~~construction~~, **project**, shall pay
7 for each ~~class level~~ of work described in subsection (c)(1) on the
8 project a scale of wages that may not be less than the common
9 construction wage.
10 (b) For the purpose of ascertaining what the common construction
11 wage is in the county, the awarding governmental agency, before
12 advertising for the contract, shall set up a committee of five (5) persons
13 as follows:
14 (1) One (1) person representing labor, to be named by the
15 president of the state federation of labor.
16 (2) One (1) person representing industry, to be named by the
17 awarding agency.



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(3) ~~A third member~~ **One (1) person** to be named by the governor.

(4) One (1) taxpayer who pays the tax that will be the funding source for the project and resides in the county where the project is located. The owner of the project shall make the appointment under this subdivision.

(5) One (1) taxpayer who pays the tax that will be the funding source for the project and resides in the county where the project is located. The legislative body (as defined in IC 36-1-2-9) for the county where the project is located shall make the appointment under this subdivision.

(c) As soon as appointed, the committee shall meet in the county where the project is located and determine in writing the following:

(1) A **trade** classification of the labor to be employed in the performance of the contract for the project, divided into the following ~~three (3) classes:~~ **two (2) skill levels:**

(A) Skilled labor, **including journeymen.**

(B) ~~Semiskilled~~ **Apprentice** labor.

~~(C) Unskilled labor.~~

(2) The wage, **including fringe benefits**, per hour to be paid each of the ~~classes:~~ **levels.**

The committee is not required to consider information not presented to the committee at the meeting. IC 5-14-1.5 (open door law) applies to a meeting of the committee.

(d) Information submitted to the committee under subsection (c) must be accompanied by a written statement that is signed by the person or the authorized agent of the person submitting the information and that affirms both of the following:

(1) That the information submitted is true and accurate.

(2) That the person is aware that submission of false information is a Class B misdemeanor as provided in section 12 of this chapter.

The committee may not consider information that is not accompanied by the written statement described in this subsection.

~~(d)~~ **(e)** The rate of wages determined under subsection (c) shall not be less than the common construction wage for each of the ~~three (3) classes~~ **two (2) skill levels** of wages described in subsection (c) that are currently being paid in the county where the project is located.

~~(e)~~ The provisions of this chapter shall not apply to contracts let by the Indiana department of transportation for the construction of highways, streets, and bridges. ~~IC 8-23-9~~ applies to state highway projects.

(f) A determination under subsection (c) shall be made and filed

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with the awarding agency at least two (2) weeks prior to the date fixed for the letting, and a copy of the determination shall be furnished upon request to any person desiring to bid on the contract. The schedule is open to the inspection of the public.

(g) If the committee appointed under subsection (b) fails to act and to file a determination under subsection (c) at or before the time required under subsection (f), the awarding agency shall make the determination, and its finding shall be final.

(h) It shall be a condition of a contract awarded under this chapter that the successful bidder and all subcontractors shall comply strictly with **all provisions of this chapter, including** the determination made under this section.

(i) ~~The provisions of This chapter do~~ **does** not apply to public **work** projects in this state ~~that would otherwise be subject to the provisions of this chapter~~ that are to be paid for in whole or in part with funds granted by the federal government, unless the department of the federal government making the grant shall consent in writing that ~~the provisions of this chapter are applicable~~ **applies** to the project.

(j) Notwithstanding any other law, ~~the provisions of this chapter~~ **apply also applies** to projects that will be:

(1) owned entirely; or

(2) leased with an option to purchase;

by the state or a political subdivision (as defined in IC 36-1-2-13).

(k) Notwithstanding any other law, this chapter does not apply to projects in which the ~~actual construction costs~~ **estimated cost of the public work is** less than one hundred fifty thousand dollars (\$150,000).

(l) If the commissioner determines, after notice and an opportunity to respond is given to an awarding agency, that an awarding agency has divided a public work project to avoid the application of this chapter, the commissioner shall issue an order compelling compliance with this chapter. This remedy is in addition to any other penalty that may be imposed for artificially dividing a public work project. In making a determination as to whether an awarding agency has divided a public work project to avoid the application of this chapter, the commissioner shall consider all of the following:

(1) The physical separation of the project structures.

(2) The timing of the work on phases or structures of the project.

(3) The continuity of the contractors and subcontractors working on parts or phases of the project.

(4) The manner in which the project is:

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(A) administered by the awarding agency; or

(B) performed by the contractor and subcontractors.

SECTION 2. IC 5-16-7-2 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2008]: Sec. 2. (a) The state, a political subdivision, or any a municipal corporation thereof letting any such contracts a public work contract shall require any contractor or subcontractor performing such public work under the public work contract to file a wage schedule of the wages to be paid to such laborers, workmen, or mechanics thereon with the state or with such municipal corporation. Such each trade classification of labor to be employed in the performance of the contract for the project.

(b) The wage schedule shall be filed with the state, political subdivision, or municipal corporation before any work is performed on such the contract or subcontract. provided, such

(c) The wage scale shall not be less than the scale determined as provided in section 1 of this chapter, provided further, that nothing in

(d) This chapter provided shall does not prevent such the contractor or subcontractor from paying a higher rate of wages than set out in the schedule of wages filed by him: the contractor or subcontractor.

(e) In addition to IC 22-1-1-15, IC 22-1-1-16, and IC 22-1-1-17, each contractor and subcontractor on a public work project shall do the following while engaged on the project:

(1) For each worker who is employed by the contractor or subcontractor during the performance of the public work project, make and keep for a period of three (3) years accurate records of the worker's trade classification and skill level as described in section 1(c) of this chapter. The records must include the following information for each worker:

(A) Name.

(B) Address.

(C) Telephone number, if available.

(D) Social Security number.

(E) Trade classification.

(F) Skill level.

(G) The wage rate paid.

(H) The number of hours worked each day and each week.

(I) The times at which the worker started and finished work each day.

(J) Actual wages, including fringe benefits, paid.

(K) Deductions from wages paid.

(2) Submit to the awarding agency each week in person, by mail, or by electronic means a certified payroll containing the

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information required under subsection (e)(1). A payroll certification must:

(A) be signed by an authorized agent of the contractor or subcontractor; and

(B) state the following:

(i) That the payroll records are accurate.

(ii) That the hourly wage rate, including fringe benefits, paid to each worker is not less than the common construction wage required by this chapter.

(iii) That the contractor or subcontractor is aware that filing a payroll known to be false is a Class B misdemeanor.

(f) The awarding agency shall keep the records submitted by a contractor or subcontractor under subsection (e) for not less than three (3) years after the last date that the contractor or subcontractor performs work on the public work project. The records submitted under subsection (e) are public records, except that a worker's Social Security number is confidential as provided by IC 5-14-3-4(a)(12).

(g) The contractor or subcontractor shall make the records described in this section available during normal business hours at a location within Indiana for inspection by the awarding agency or the department.

(h) To enable the verification of the accuracy of the records submitted under this section, each contractor and subcontractor shall permit interviews of its workers at the public work project site during normal business hours by the awarding agency or the department.

(i) Each contractor and subcontractor performing work on a public work project shall post the common construction wage scale for each level of work described in section 1(c)(1) of this chapter in a prominent and easily accessible place at:

(1) the public work project site; and

(2) places where the contractor or subcontractor pays its workers.

SECTION 3. IC 5-16-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. **Except as otherwise indicated,** the definitions in this section apply throughout this chapter:

(1) "Apprentice" means a person who:

(A) is employed and registered in a bona fide apprenticeship program; or

(B) is not individually registered in a bona fide

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apprenticeship program but is in the first ninety (90) days of probationary employment and certified by the Bureau of Apprenticeship and Training of the United States Department of Labor as eligible for probationary employment as an apprentice.

The term does not include a person who is employed on a public work project but is not registered in a bona fide apprenticeship program for the trade classification in which the person is employed or is not certified by the Bureau of Apprenticeship and Training of the United States Department of Labor as eligible for probationary employment as an apprentice for the trade in which the person is employed.

(2) "Awarding agency" means the state, political subdivision, or municipal corporation that lets a contract for the performance of a public work project.

(3) "Bona fide apprenticeship program" means an apprenticeship program that is approved by and registered with the Bureau of Apprenticeship and Training of the United States Department of Labor.

(4) "Commissioner" refers to the commissioner of the department appointed under IC 22-1-1-2.

(+) (5) "Common construction wage" means a scale of wages, including fringe benefits, for each class level of work described in section 1(c)(1) of this chapter that is not less than the common construction wage of all construction wages being paid in the county where a project is located, as determined by the committee described in section 1(b) of this chapter after having considered:

(A) reports from the department of workforce development; and

(B) any other information submitted by any person to the committee established under section 1(b) of this chapter.

(2) "State of Indiana" includes any officer, board, commission, or other agency authorized by law to award contracts for the performance of public work on behalf of the state, excepting as otherwise provided in this chapter.

(6) "Department" refers to the state department of labor created by IC 22-1-1-1. The term includes the commissioner, department employees, and agents authorized by the commissioner to act on behalf of the department.

(7) "Fringe benefits" means compensation due a worker employed on a public work project for benefits in addition to wages, including:

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- 1 (A) holiday pay;
 2 (B) time off for:
 3 (i) sickness or injury; or
 4 (ii) personal reasons or vacation;
 5 (C) bonus pay;
 6 (D) authorized expenses incurred during the course of
 7 employment; and
 8 (E) contributions due to or on behalf of the worker.
 9 (8) "Interested party" means any of the following:
 10 (A) A labor organization that:
 11 (i) represents workers engaged in the same craft or trade
 12 classification as workers employed by a contractor or
 13 subcontractor that is performing work on a public work
 14 project; and
 15 (ii) has as a purpose negotiating with employers
 16 concerning the wages, hours, or terms and conditions of
 17 employment for employees.
 18 (B) A joint labor-management committee established
 19 under the federal Labor Management Cooperation Act of
 20 1978 (29 U.S.C. 175a).
 21 (9) "Municipal corporation" includes any of the following:
 22 (A) A county, city, town, or school corporation as well as any
 23 other entity as defined by IC 36-1-2-10.
 24 (B) An officer, a board, a commission, or other agency
 25 authorized by law to award contracts for the performance of
 26 public work on behalf of any such municipal corporation. The
 27 term also includes an entity described in clause (A).
 28 (C) A redevelopment commission established under
 29 IC 36-7-14-3.
 30 (10) "Notice of violation" refers to the department's formal
 31 written notice to a contractor or subcontractor of the
 32 department's determination that the department has reason
 33 to believe that the contractor or subcontractor has committed
 34 a violation of this chapter.
 35 (11) "Notice of second violation" refers to a second notice of
 36 violation issued by the department to a contractor or
 37 subcontractor within three (3) years after the date on which
 38 the department previously issued a notice of violation to the
 39 same contractor or subcontractor.
 40 (12) "Payroll records" means the records that a contractor or
 41 subcontractor is required to file and keep under section 2(e)
 42 of this chapter.

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(4) (13) "Public work" includes any construction, alteration, reconstruction, repair, rehabilitation, refinishing, refurbishing, remodeling, remediating, renovation, custom fabrication, maintenance, landscaping, improvement, moving, wrecking, painting, decorating, or demolition of, or any adding to or subtracting from any public building, structure, airport facility, highway, roadway, street, alley, bridge, sewer, drain, ditch, sewage disposal plant, water works, parking facility, railroad, excavation, or other project, development, real property, or improvement, or any other work of any nature or character whatsoever or any part of any of the above, whether or not the performance of the work involves the addition to, or fabrication into, any structure, project, or development, real property, or improvement of any material or article of merchandise, which is paid for out of a public funds, excepting fund or a special assessment, except as otherwise provided in this chapter. The term also includes any public work leased by a political subdivision under a lease that contains an option to purchase.

(14) "Records" means books, documents, papers, payrolls, registers, or any other records in whatever form the records are maintained.

(15) "State" includes any officer, board, commission, or other agency authorized by law to award contracts for the performance of a public work project on behalf of the state.

(16) As used in this section, "violation" refers to any of the following:

(A) The failure or refusal of a contractor or subcontractor to pay to one (1) or more workers the common construction wage required by this chapter.

(B) The failure of a contractor or subcontractor to keep accurate records as required by this chapter.

(C) The failure of a contractor or subcontractor to comply with the requirements of this chapter for payroll records.

(D) The failure of a contractor or subcontractor to comply with the requirements, other than the requirements concerning records and payroll records, of section 2 of this chapter.

(E) The failure or refusal of a contractor or subcontractor to:

- (i) submit records; or
- (ii) give testimony;

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to the department in response to a subpoena issued under this chapter.

(F) The refusal of a contractor or subcontractor to permit the department to inspect the contractor's or subcontractor's records as required by this chapter.

(G) The failure of a contractor or subcontractor to post common construction wage information as required by this chapter.

(H) The failure of a contractor or subcontractor to comply with a provision of this chapter not described in clauses (A) through (G).

(17) "Worker" means a laborer, mechanic, or other non-management employee of a contractor or subcontractor on a public work project.

SECTION 4. IC 5-16-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) This chapter does not apply to contractors or subcontractors performing public work for Purdue University on agricultural or forestry land owned or occupied by the university and used by it for educational or research purposes if the cost of the work is estimated to be less than fifty thousand dollars (\$50,000):

(b) Except as provided in IC 5-23, this chapter does not apply to a person that has entered into an operating agreement with the state, a municipal corporation, or another political subdivision for the management or operation of a public facility under IC 5-23.

SECTION 5. IC 5-16-7-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. (a) The commissioner shall do the following:

- (1) Enforce the provisions of this chapter.
- (2) Investigate diligently complaints alleging a violation of this chapter.
- (3) Institute actions for remedies prescribed by this chapter.

(b) The commissioner may, on behalf of the state, seek judicial relief to enjoin any of the following:

- (1) The awarding of a contract that would violate this chapter.
- (2) The beginning of a public work project that:
 - (A) violates; or
 - (B) if begun, will violate; this chapter.
- (3) The continuing performance of a public work project that violates this chapter.

(c) If the commissioner or the commissioner's authorized agent

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determines that there is a basis for the belief that there may have been a criminal violation under this chapter, the commissioner or the commissioner's authorized agent shall refer the matter to the attorney general or the appropriate prosecuting attorney.

(d) In addition to exercising its powers under IC 22-1-1, the department may do any of the following to enforce this chapter:

(1) Enter and inspect the place of business or employment of a contractor or subcontractor that has performed or is performing work under a public work contract.

(2) Inspect records that relate in any way to the wages, hours, or other terms and conditions of employment of a worker employed by a contractor or subcontractor that has performed or is performing work under a public work contract.

(3) Make copies of records inspected under subdivision (2).

(4) Interview workers to determine compliance with this chapter.

(5) Administer oaths.

(6) Take depositions.

(7) Issue subpoenas to require the attendance of witnesses and the production of records to determine compliance with this chapter.

(8) Apply to the appropriate circuit or superior court to enforce a subpoena or other investigatory demand issued under this chapter.

(9) Require the affirmation by a contractor or subcontractor, as the department determines necessary, of statements regarding wages, hours, names, addresses, and other information relating to the employment of workers.

(10) Contract with a certified public accountant to audit a contractor, a subcontractor, the state, a political subdivision, or a municipal corporation to determine compliance with this chapter.

(e) The commissioner may require the state, a political subdivision, or a municipal corporation that awards a contract for the performance of a public work project to include in the contract provisions that require the state, political subdivision, or municipal corporation to:

(1) withhold not more than twenty-five percent (25%) of the total amount of the contract, if the department notifies the state, the political subdivision, or the municipal corporation that a contractor or subcontractor has failed to produce,

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1 within ten (10) days after the date that the department
 2 requires production, records required by the department
 3 under this section; and

4 (2) upon notification from the department:

5 (A) if the records required by the department under this
 6 section have been produced, release the amounts withheld
 7 under subdivision (1); or

8 (B) if the records required by the department under this
 9 section have not been produced, pay directly to the
 10 workers employed by the contractor or subcontractor
 11 from the amounts withheld under subdivision (1) any
 12 wages found to be due to the workers under this chapter.

13 SECTION 6. IC 5-16-7-7 IS ADDED TO THE INDIANA CODE
 14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 15 1, 2008]: Sec. 7. (a) After receiving a complaint concerning an
 16 alleged violation of this chapter, the department shall investigate
 17 the circumstances described in the complaint. The department may
 18 also begin an investigation on its own initiative without receiving
 19 a complaint.

20 (b) When making a determination as to whether:

21 (1) a violation of this chapter has occurred; or

22 (2) a notice of violation should be issued;

23 the department shall consider all information received and
 24 observations made during the department's investigation.

25 (c) Each day worked by one (1) worker in violation of this
 26 chapter is considered a separate violation.

27 (d) In determining whether a contractor or subcontractor has
 28 failed to give the department access to records, the department
 29 may rely on the following:

30 (1) Information documented during the department's
 31 investigation.

32 (2) The certified payroll records filed with the awarding
 33 agency.

34 (3) Any other relevant information available to the
 35 department.

36 (e) After the department determines that the department has
 37 reason to believe that a contractor or subcontractor has violated
 38 this chapter, the department shall consider the following factors in
 39 deciding whether to issue a notice of violation:

40 (1) The severity of the violation, including the following:

41 (A) Whether the contractor or subcontractor has received
 42 more than two (2) notices of violation within three (3)

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- 1 years of the date of the current violation.
- 2 (B) Whether the violation is substantive and not merely a
- 3 mathematical, bookkeeping, computer, programming, or
- 4 other technical error.
- 5 (2) The total amount of wages required to be paid under this
- 6 chapter that have not been paid as the result of the violation.
- 7 (3) The nature and duration of the present violation.
- 8 (4) The contractor's or subcontractor's history of violation of
- 9 this chapter. However, the department may not consider a
- 10 violation that occurred more than seven (7) years before the
- 11 date of the current violation.
- 12 (5) Whether the contractor or subcontractor has made a good
- 13 faith attempt to comply with this chapter by:
- 14 (A) filing certified payroll records with the awarding
- 15 agency;
- 16 (B) keeping accurate records for the three (3) years
- 17 preceding the date of the current violation; and
- 18 (C) producing certified payroll records as required under
- 19 section 2 of this chapter.
- 20 (f) A notice of violation must contain the following information:
- 21 (1) The name of the contractor or subcontractor alleged to
- 22 have violated this chapter.
- 23 (2) An identification of the public work project involved.
- 24 (3) A description of the conduct that constitutes the violation
- 25 that is alleged to have occurred.
- 26 (4) A specific reference to the provision or provisions of this
- 27 chapter that the contractor or subcontractor is alleged to have
- 28 violated.
- 29 (5) A statement as to whether the notice is a notice of violation
- 30 or a notice of second violation issued to the contractor or
- 31 subcontractor alleged to have violated this chapter.
- 32 (6) An estimate of the amount of wages required to be paid
- 33 under this chapter that have not been paid as the result of the
- 34 alleged violation.
- 35 (7) A summary of the following:
- 36 (A) The rights and responsibilities of the parties involved.
- 37 (B) The procedures that the department will follow to
- 38 resolve the allegations.
- 39 (g) The department shall send a notice of violation by certified
- 40 mail to the last known address of the contractor or subcontractor
- 41 alleged to have violated this chapter.

42 SECTION 7. IC 5-16-7-8 IS ADDED TO THE INDIANA CODE

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1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
2 1, 2008]: **Sec. 8. (a) Any of the following may maintain a private
3 action on behalf of a worker to recover damages for the
4 contractor's or subcontractor's failure to pay the worker the
5 common construction wage required by this chapter:**

6 (1) The worker.

7 (2) The department.

8 (3) An interested party.

9 (b) A person or entity described in subsection (a) that obtains a
10 judgment in an action brought under this section may recover from
11 the contractor or subcontractor all of the following:

12 (1) The difference between what was paid to the worker and
13 what the worker was entitled to be paid under this chapter.

14 (2) One (1) of the following amounts:

15 (A) For a notice of violation, two percent (2%) of the
16 amount determined under subdivision (1) computed from
17 the date of the failure of the contractor or subcontractor to
18 pay the worker the amount due under this chapter to the
19 date the amount determined under subdivision (1) is paid
20 to the worker.

21 (B) For a notice of second violation, five percent (5%) of
22 the amount determined under subdivision (1) computed
23 from the date of the failure of the contractor or
24 subcontractor to pay the worker the amount due under
25 this chapter to the date the amount determined under
26 subdivision (1) is paid to the worker.

27 (3) Litigation costs.

28 (4) Reasonable attorney's fees.

29 (5) Liquidated damages calculated at twice the amount of the
30 difference between:

31 (A) what was paid to the worker; and

32 (B) what the worker was entitled to be paid under this
33 chapter.

34 (c) In addition to amounts awarded under subsection (b), the
35 court shall impose on the contractor or subcontractor a penalty of:

36 (1) twenty percent (20%) of the amount determined under
37 subsection (b)(1), for a notice of violation; or

38 (2) fifty percent (50%) of the amount determined under
39 subsection (b)(1), for a notice of second violation.

40 (d) A penalty imposed under subsection (c) shall be paid to the
41 department.

42 (e) An interested party who maintains an action under this

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1 section on behalf of a worker holds any amounts recovered under
 2 subsections (b)(1) and (b)(2) in trust for the individual worker. If
 3 the worker for whom amounts are held in trust under this
 4 subsection does not claim the amounts within one (1) year after the
 5 date the amounts are paid to the interested party, the amounts
 6 shall be considered unclaimed property under IC 32-34.

7 SECTION 8. IC 5-16-7-9 IS ADDED TO THE INDIANA CODE
 8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 9 1, 2008]: Sec. 9. (a) A person may not discharge, discipline, or
 10 otherwise discriminate against an individual who does any of the
 11 following:

12 (1) Files a charge, institutes a proceeding, or causes another
 13 person to file a charge or institute a proceeding related to the
 14 administration or enforcement of this chapter.

15 (2) Assists or intends to assist in an investigation or a
 16 proceeding related to the administration or enforcement of
 17 this chapter.

18 (3) Testifies or intends to testify in an investigation or a
 19 proceeding related to the administration or enforcement of
 20 this chapter.

21 (b) An individual who believes that the individual has been
 22 discharged, disciplined, or discriminated against in violation of this
 23 section may apply to the department for a review of the discharge,
 24 discipline, or discrimination.

25 (c) An individual who seeks a review under this section must do
 26 the following:

27 (1) File an application for review with the department not
 28 later than one hundred eighty (180) days after the discharge,
 29 discipline, or discrimination has occurred.

30 (2) Serve a copy of the application on the person alleged to
 31 have violated this section.

32 (d) After receiving an application filed under this section, the
 33 department shall investigate the allegations to the extent the
 34 department considers appropriate.

35 (e) At the request of the individual who filed the application or
 36 the person alleged to have violated this section, the department
 37 shall hold a hearing under IC 4-21.5.

38 (f) After concluding its investigation under subsection (d) and
 39 any hearing held under subsection (e), the department shall make
 40 findings of fact and conclusions of law.

41 (g) If the department finds that a violation of this section has
 42 occurred, the department shall issue an order requiring the person

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that violated this section to:

(1) cease the violation; and

(2) take whatever action the department determines is necessary to remedy any injury to the individual who filed the application, including rehiring or reinstating the individual to the individual's former position and compensating the individual for any time that the individual was unemployed.

(h) If the department finds that the person did not violate this section, the department shall dismiss the application.

SECTION 9. IC 5-16-7-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. (a) This section applies to either of the following:

(1) A contractor or subcontractor that the department has found to be in violation of this chapter on at least two (2) separate, unrelated occasions during any three (3) year period.

(2) A person who has an interest in a contractor or subcontractor found to be in violation of this chapter on at least two (2) separate, unrelated occasions during any three (3) year period.

(b) For the purpose of this section, a person has an interest in a contractor or subcontractor if the person is any of the following:

(1) A partner in the partnership that is the contractor or subcontractor.

(2) An owner or officer of the contractor or subcontractor.

(3) An agent, an employee, a manager, or a representative of the contractor or subcontractor.

(4) A consultant to the contractor or subcontractor.

(5) A person who pays a contractor or subcontractor from amounts that the person is paid for performance of work on a public work project.

(c) A person described in subsection (a) may not be awarded a public work contract for a period of at least five (5) years after the date of the most recent violation of this chapter.

(d) Notwithstanding IC 22-1-1-8(2), upon a determination that a contractor or subcontractor has violated this chapter on at least two (2) separate, unrelated occasions in a three (3) year period, the department shall do the following:

(1) Notify the contractor or subcontractor that:

(A) the department has determined that the contractor or subcontractor has violated this chapter on at least two (2) separate, unrelated occasions in a three (3) year period;

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(B) the contractor or subcontractor has ten (10) working days after the receipt of the notice from the department to request a hearing before the department on the department's determination; and

(C) failure to respond within the ten (10) working day period will result in:

(i) an automatic and immediate debarment for at least the five (5) year period described in subsection (c); and

(ii) notwithstanding IC 22-1-1-8(2), placement and publication of the debarment on the department's official Internet web site.

(2) If the contractor or subcontractor requests a hearing within the ten (10) working day period, set a hearing on the alleged violations not later than forty-five (45) calendar days after the department receives the request.

(3) Promulgate, adopt, amend, and rescind rules and regulations to govern the hearing described in subdivision (2).

(4) Keep a current list of contractors and subcontractors that the department has found in violation of this chapter on at least two (2) separate, unrelated occasions during any three (3) year period.

(5) Publish the list described in subdivision (4) on the department's official Internet web site.

(6) Provide the list described in subdivision (4) at no charge to a state agency, political subdivision, or municipal corporation that requests the list.

SECTION 10. IC 5-16-7-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 11. An agreement that:**

(1) is made by a contractor or subcontractor and:

(A) a worker; or

(B) an applicant for employment; and

(2) provides for the worker or applicant for employment to work on a public work project for a wage lower than the applicable common construction wage determined under this chapter;

is void.

SECTION 11. IC 5-16-7-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 12. (a) A contractor or subcontractor, or an agent or a representative of a contractor or subcontractor, that knowingly or intentionally does any of the following commits a Class B**

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1 **misdemeanor:**

2 (1) Fails to pay the rate of wages determined under this
3 chapter.

4 (2) Fails to comply with any provision of this chapter.

5 (3) Fails to allow access to records required to be kept under
6 this chapter.

7 (4) Fails to comply with an order issued under this chapter.

8 (b) A person or entity, including an officer, an agent, or a
9 representative of an awarding agency, that knowingly or
10 intentionally violates this chapter commits a Class B misdemeanor.

11 SECTION 12. IC 5-16-7-13 IS ADDED TO THE INDIANA CODE
12 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
13 1, 2008]: **Sec. 13. (a) This section does not apply to an agent or a
14 representative of a labor organization collecting dues or
15 assessments of the labor organization.**

16 (b) In addition to any other penalty provided under this chapter,
17 a person that knowingly or intentionally:

18 (1) either before or after a worker is employed on a public
19 work project, requests or demands that the worker pay back,
20 return, donate, contribute, or give back to any person a part
21 or all of the worker's wages, salary, or another thing of value
22 based on a statement, representation, or understanding that
23 the worker's failure to comply with the request or demand
24 will prevent the worker from obtaining or retaining
25 employment on a public work project; or

26 (2) pays, requests, or authorizes another person, directly or
27 indirectly, to violate this section;

28 commits a Class A misdemeanor.

29 (c) It is not a defense to a prosecution under this section that the
30 worker agreed to give the wages, salary, or another thing of value
31 to the person.

32 SECTION 13. IC 5-16-7-14 IS ADDED TO THE INDIANA CODE
33 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
34 1, 2008]: **Sec. 14. The provisions of this chapter are severable as
35 provided in IC 1-1-1-8(b).**

36 SECTION 14. IC 5-16-7-15 IS ADDED TO THE INDIANA CODE
37 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
38 1, 2008]: **Sec. 15. The department may adopt rules under IC 4-22-2
39 to implement this chapter.**

40 SECTION 15. IC 8-23-9-22.5 IS ADDED TO THE INDIANA
41 CODE AS A NEW SECTION TO READ AS FOLLOWS
42 [EFFECTIVE JULY 1, 2008]: **Sec. 22.5. An individual, a firm, a**

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partnership, a limited liability company, or a corporation that is awarded a contract by the department for the construction, improvement, or maintenance of a highway, street, road, or bridge, and any subcontractor of the construction, improvement, or maintenance, shall pay for each level of work specified in IC 5-16-7-1(c) not less than the common construction wage determined under IC 5-16-7.

SECTION 16. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2008]: IC 5-16-7-3; IC 8-23-9-22.

SECTION 17. [EFFECTIVE JULY 1, 2008] IC 5-16-7-1, IC 5-16-7-2, IC 5-16-7-4, and IC 5-16-7-5, all as amended by this act, and IC 5-16-7-6, IC 5-16-7-7, IC 5-16-7-8, IC 5-16-7-9, IC 5-16-7-10, IC 5-16-7-11, IC 5-16-7-12, IC 5-16-7-13, IC 5-16-7-14, and IC 8-23-9-22.5, all as added by this act, apply to contracts for the construction of a public work project awarded after June 30, 2008.

SECTION 18. [EFFECTIVE JULY 1, 2008] (a) Notwithstanding IC 5-16-7-15, as added by this act, the department of labor shall carry out the duties imposed upon it under IC 5-16-7-1, IC 5-16-7-2, IC 5-16-7-4, and IC 5-16-7-5, all as amended by this act, and IC 5-16-7-6, IC 5-16-7-7, IC 5-16-7-8, IC 5-16-7-9, IC 5-16-7-10, IC 5-16-7-11, IC 5-16-7-12, IC 5-16-7-13, and IC 5-16-7-14, all as added by this act, under interim written guidelines approved by the commissioner of the department of labor.

(b) This SECTION expires on the earlier of:

- (1) the date rules are adopted under IC 5-16-7-15, as added by this act; or
- (2) July 1, 2009.

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